



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF STATE LANDS AND FORESTRY

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11/015/026
DOGMA
MINERALS PROJECT
FILE COPY

RECEIVED

DEC 04 1992

DIVISION OF
OIL GAS & MINING

December 3, 1992

CERTIFIED MAIL NO. P 879 600 112

Mr. Harold Marston
Jay Pagano Estate
PO Box 136
Wellington, Utah 84542

Re: Easement Application No. 191 - Jay Pagano Estate: Road located in Section 16, T15S, R11E, SLB&M, Carbon County.
- Public comments received from Mineral Lessee
- Trespass on State Land - Requirements to Remedy

Dear Mr. Marston:

The Division of State Lands and Forestry (Division) has received comments regarding the above-referenced application, pursuant to the recently advertised public notice, which solicited written comments until 5:00 pm on Friday, November 20, 1992. On November 19, 1992, Emery Industrial Resources, a mineral lessee (ML 45667) submitted a letter responding to the public notice. I have attached a copy of that letter and the public notice for your reference. They have requested that the application be denied for several reasons.

Emery Industrial Resources and others have also commented that the roadway applied for in your application, should not have been considered an existing road and that there had been no previous grading of the road before this year, and that at best it had been a small "two track" trail. Since you submitted your application, the Division has also been informed by the Bureau of Land Management of other unauthorized road excavations on nearby federal lands for which they hold you responsible. The Division of Oil, Gas, & Mining (DOGMA) has also notified us of your alleged Non-Compliance with the Pagano Clay Project, M/015/026, which directly affects State lands with a trespass.

When you applied for the easement, you indicated that the road was existing and that there had been previous grading of the road; therefore, I have proceeded with the application process assuming that this was the case. However, since that time, the previous existence of the road has been brought into serious question. The most recent topographical maps don't show the road which is applied for under your application. We are not aware of any aerial photos that document previous existence of the road. The Division has also documented with photographs additional grading of the road which occurred between visual inspections in July 1992 and November 1992. This additional grading has definitely been done after you had been informed by DOGMA and the Division that approval from Division was required for the access road. Such approval was never given. The Division has also recently documented that the pile of overburden has also impacted State lands,

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and that an additional small portion of State land between the pile of overburden and the requested road easement has been graded and is also in trespass.

Based on the information we have and the inspections we have made, the Division regrets to inform you that the graded roads and the pile of overburden on State lands are in TRESPASS, and that we have no other alternative than to pursue action against you and Jay Pagano Estate for trespass on State land. As a result, your easement application shall not be further processed and is subject to cancellation including but not limited to forfeiture of all previously submitted fees.

We are recommending the following remedy to the trespass, which will be required before we will proceed with the application.

- 1) Payment of treble damages for what would have normally been assessed for the road right of way. Previously, you submitted an easement fee of \$924.45. This was based upon an estimated road length of 184.89 rods and the Board approved standard fee of \$5.00 per rod for an existing road. Because we now believe the road is not eligible as an existing road for purposes of the easement application process, we must use the per rod rate for a new road, which rate is \$7.50 per rod. This would increase the easement fee, which would then be tripled for trespass damages equaling \$4,160.00. (Refer to attachment A - for computation of easement fee and trespass damages)
- 2) Payment of treble damages for unauthorized use of State land for deposit of overburden and additional grading of surface. The minimum amount we would charge for this even on a short-term basis would be the minimum cost of a right of entry permit, which is \$200.00. Therefore, with required trespass damages, there is a \$600.00 charge in addition to the charge for the right of way.
- 3) Completion of a cultural resource survey. You indicated earlier that Asa Nielson was going to do a survey on the disturbed area.
- 4) Removal of the stockpile of overburden within 30 days, or it becomes the property of the State, and you will most likely be assessed additional charges for the cost to remove the overburden and reclaim the disturbed area.
- 5) Reclamation of any disturbed areas not included in the proposed 33 foot wide road right of way. This is to be done in accordance with specifications and timetables outlined by DOGM in their recent communications with you. In the event the Division does not approve the proposed road right of way, you will be required to remove the road and rehabilitate that area as well.

We are recommending that the proposed easement be approved subject to:

- 1) Your compliance to above-referenced requirements. Payment of amounts discussed in 1 and 2 totals \$4,760, less the (\$924.45) already submitted, leaving a net total due of \$3,835.55, which is to be submitted by January 8, 1993.

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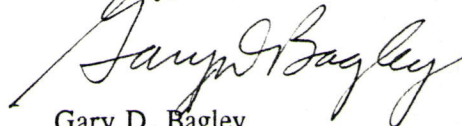
2) Final approval by the Director.

3) Since approximately the south half of the road lies on area encompassed by an existing mineral lease, the easement would be granted subject to a provision that the mineral lessee be given the right to reroute the road at their expense if the road interferes with the mineral lessee's approved plan of mining operations. This would require prior notice to and approval from the Division. This would protect the mineral lessees right to mine clay from the area beneath the road.

If you still maintain that the road was an existing graded road, then it will be your responsibility to document this to the Division by providing supporting data including but not limited to appropriate aerial photos, official maps, and affidavits. If this can be documented to the satisfaction of the Division, then we will base the easement fee on a \$5.00 per rod basis (existing road) instead of a \$7.50 per rod basis (new road). Please refer to the attached computation for a comparison. Any such documentation and accompanying fees are due within 30 days.

Regardless of whether the easement is issued, the trespass damages are due and payable by January 8, 1993. The Division's Law Enforcement Coordinator is currently being consulted and may also elect to pursue additional legal action.

Sincerely,



Gary D. Bagley
Land Specialist

GDB/dw

Attachment: As Stated

cc: Emery Industrial Resources
DSL&F Law Enforcement Coordinator
Jerry Mansfield - ML 45667
BLM
Division of Oil, Gas and Mining

"Attachment A"

Easement Application No. 191 Computation of Easement fees and Trespass Damages

Easement Fee:

Based on a road right of way 184.89 rods long and up to 33 feet wide for a 30-year term. Board approved fee for an existing roadway is \$5.00 per rod, \$7.50 per rod for a new road. Trespass fee required by statute is treble damages. It will be the applicants responsibility to prove to the Division that the road qualifies as an existing road.

<u>New Road (Recommended)</u>	
184.89 rods @ \$7.50 =	\$1386.67
(Trespass Fee)	x 3.
Subtotal	<u>\$4,160.00</u>
Plus,	
Additional disturbed areas including overburden.	
Minimum fee ROE	\$200.00
(Trespass Fee)	x 3.
Subtotal Other	<u>\$600.00</u>
Combined Subtotal	\$4,760.00
Less amount submitted	<924.45>
Total Due	<u>\$3,835.55</u>

<u>Existing Road</u>	
184.89 rods @ \$5.00 =	\$924.45
(Trespass Fee)	x 3.
Subtotal	<u>\$2,773.35</u>
Plus,	
Additional disturbed areas including overburden.	
Minimum fee ROE	\$200.00
(Trespass Fee)	x 3.
Subtotal Other	<u>\$600.00</u>
Combined Subtotal	\$3,373.35
Less amount submitted	<924.45>
Total Due	<u>\$2,448.90</u>